

## LABOUR DEPARTMENT

The 9th March, 1995

No. 14/13/87-6Lab./326.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of Haryana Co-operative Sugar Mills, Rohtak *versus* Rajbir :—

## IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 832 of 1992

SHRI RAJBIR, S/O SHRI MAHA SINGH, C/O SHRI SUNDER SINGH, GENERAL SECRETARY, DISTRICT CITU COMMITTEE, ROHTAK *... Workman.*

*versus*THE MANAGEMENT OF HARYANA CO-OPERATIVE SUGAR MILLS, ROHTAK *... Management**Present :*

Shri R. C. Siwach, Authorised Representative for the Workman.

Shri M. Kaushal, Authorised Representative, for the management.

## AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court, for adjudication,—*vide* Labour Department Endorsement No. 43354—59, dated 3rd November, 1987 :—

Whether the termination of services of Shri Rajbir is justified and in order? If not, to what relief he is entitled?

2. The Workman and the management were summoned. The workman appeared and filed the statement of claim which is to the effect that he worked from 1980 to 13th December, 1985 in the respondent-management but the management had terminated his services though the petitioner was taken on the duty because of the order passed by the Apex Court. The workman/petitioner was in the jail in a case and when he was acquitted/released from the jail he went to the management and requested for work but he was never taken on duty. The petitioner requested the management,—*vide* Regd. letter dated 30th December, 1985 but the management refused to take him on duty. The workman had given the demand notice on 21st January, 1986 but the management refused to take him on duty. Again the management did not take the workman on duty is illegal, *null and void* and the workman is entitled to the job with continuity of service and with full back wages.

3. The management appeared and filed the written statement that the respondent is sugar industry running on co-operative basis and is being run for the welfare of farmers of this area. Employees are engaged during crushing season and this period of crushing varies according to the crop growth of the sugarcane. There are certain permanent employees required in the industry whereas there are some regular jobs during the particular season. The employment of these employees depend upon the variability of work from season to season and they are paid off after the expiry of the season and are engaged on preferential basis as per the work requirement in the coming season. The applicant was appointed on temporary basis as per the temporary nature of work. During the period of February, 1985 the workers resorted to strike in the factory in an illegal manner in contravention to the provisions of the Industrial Disputes Act, 1947. Conciliation proceedings were pending at the time when the workers resorted to strike. The D.L.C. Sonipat intervened in the affairs of the demand notice. The offer given by the management was not accepted by the working force. Rather than conciliation proceedings and thereby the strike is illegal as per Sections 23 & 25 of the Industrial Disputes Act, 1947. The applicant proceeded on strike with effect from 14th February, 1985. He was advised to report for duty. The strike caused huge losses to management being initiated during the crushing season. The applicant reported for duty as per the directive of the Hon'ble Supreme Court alongwith other many workers on 28th November, 1985 after 14th February, 1985 onwards. The applicant filed demand notice on 21st January, 1986 i.e. after gap of nearly more than one

month received later on and the matter was conciliated upon. During the conciliation meeting it was specified by the management that his case can be considered for re-employment in the coming season and he can join duty in the coming season of 1986-87 but the applicant refused to accept the offer for the reason best known to him. It is a case of self abandonment of service and the terms of reference should have been regarding abandonment of regarding the issue of re-employment. Whereas the present reference has been made on the point of termination. Under section 10, the appropriate Government is bound to consider all these aspects regarding the pleadings of the parties; then the Labour Court can not travel beyond the terms of reference. Hence the terms of reference made by the Government is without jurisdiction. In this case the applicant has right of re-employment during existing season but the workman/petitioner refused to accept the offer. Hence claim statement be dismissed. The workman for the first time joined on 5th December, 1981 and worked in the season only. The respondent has no knowledge about the arrest as alleged nor any intimation was sent to the respondent by the applicant. No letter was ever presented to the respondent nor the respondent ever refused to receive the letter dated 30th December, 1985 as alleged. The applicant never came to report for duty. The management received the demand notice from Conciliation Officer wherein offer was given for the coming season but the applicant declined to accept the offer. There is no illegal action for unfair labour practice resorted by the management. The applicant is gainfully employed since he started absenting from duty of his own and hence the reference be answered against the applicant.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues were framed :—

1. As per terms of reference?
2. Whether the workman abandoned the job? OPR
3. Whether the reference is bad in law? OPR
4. Whether the workman has been gainfully employed?
5. Relief?

5. My findings on the above issues with reasons thereof are as under :—

**Issue No. 1:**

6. The workman has examined Shri Daya Kishan, Time Keeper of the respondent as WW-1 Shri Rajbir Singh, workman has come into witness box as WW-2, Shri Ranbir Singh, Clerk, Labour Inspector as WW-3, Shri Sunder Singh, as WW-4 and evidence was closed. The management has examined Shri J. P. Sirivastav as MW-1 also examined Shri S. K. Jain, Clerk of the respondent as MW-2 and evidence was thereafter closed.

7. Shri Daya Kishan made the statement that petitioner was not seasonal worker though he was working in the management on daily wages and he worked for the first time in the month of December, 1981 and before that period he used to work on other centres of the factory and he had come to the management factory from centres on 22nd February, 1983. Shri Daya Kishan further made the statement that the applicant Rajbir Singh had worked for 107 days in the year, 1983, 139 days in the year, 1984, 26 days in January, 1985 and 11 days in February, 1985. He admitted that presence of the workman is put in the attendance register with effect from 7th February, 1985 to 13th February, 1985 as seasonal workers and permanent workers but presence of workman has not been shown on duty with effect from 16th February, 1985.

8. The workman has made the statement that he was working in the management as seasonal permanent workers from 1984,—*vide* order Ex. W-1 and worked upto 13th February, 1985. Thereafter the strike had taken place and after strike was over he was going to join but he was not allowed to join the duty. Thereafter he filed civil writ petition in the Supreme Court, the Hon'ble Supreme Court has directed the management to allow the workman to come on duty but he could not go on duty as he was involved in police case and he was in the jail. He was released from jail on 20th December, 1985. The order of release is Ex. W-2. When he gone to join the duty the management had asked to produce the copy of the order and he produced the copy of the order but the management had never allowed to him work then he had been gone upto 30th December, 1985. He had sent registered letter, dated 30th December, 1985, the copy of which is Ex. W-3, W-5, and thereafter he sent the demand notice dated 21st January, 1986 which was not accepted which had come back, postal receipt of which Ex. W-5. The management had never asked him on duty if they asked the duty he would have been ready to gone. WW-3 Shri Ranbir Singh, Clerk Labour Inspector, Rohtak has made the statement that the office had received the application, photostat copy of which is Ex. W-3/A and he called the parties for 31st January, 1986 but the management did not appear and notice was issued for 16th January, 1986,—*vide* Ex. W-3/C. He also made the

statement that certain workers had moved the application, copies of which are Ex. W-3/E to F. WW-4 Sunder Singh who made the statement that the applicant was working on daily wages on permanent basis in the respondent. The strike had occurred on 13th February, 1985. Workers had gone to Supreme Court as order passed by the Hon'ble Supreme Court that workers gone to factory on 13th December, 1985 as the order of the Supreme Court, the applicant and the other workers were deemed to be attended with effect from 28th November, 1985 but the workman was in the jail so he could not come. He tried to meet Managing Director and thus refused to take on duty.

9. Shri S. P. Sirivastav, Assistant Labour Commissioner, Haryana has deposed that he had received letter Ex. MW-1/1 from the management and his office received letter copy of which Ex. MW-1/3 and there is no letter of the workman in his office file showing that they are not ready to take the workman on duty and there is no demand notice from workman on this context. On 21st October, 1987 there was no one present of the parties and the sign of O. D. Sharma, D.L.C. are on the file but there is no sign of J.L.C. S. K. Jain MW-2 made the statement that the workman had come and join the duty in November, 1985 as order by the Hon'ble Supreme Court but after that he never came in the factory. He also made the statement that the demand notice of the workman was rejected by the Government and intimation of which was Ex. MW-2/2 received by the respondent office and the workman never come to join the duty after filing claim statement. He admitted that after writing the letter Ex. MW-2/2 no other letter was written to the workman to join the duty. He also could not say whether any person for the management has appeared before the Labour Inspector on the complaint filed by the workman. He also admitted the sign of Shri Mohtab Singh on Ex. W 3/D as the Mehtab Singh was working in the office of the respondent in December, 1985. He also could not tell when the officer had given to the workman to join the duty.

10. It is plea of the management that the management had never terminated the services of the workman and they were already willing to allow the workman to come and join the duty. The management had never terminated the services and hence the claim in the reference given is bad in law as the reference made is of terms of abandonment and no separate issue. This point also be decided in this issue. The workman/applicant made the statement that he never refused to accept the offer and he was already join the duty but the management never allowed to him to join the duty.

11. As the workman was acquitted by the Court of Shri V. K. Kaushal, learned District and Sessions Judge, Rohtak in case under Section 302 IPC on 20th December, 1985. The Hon'ble Supreme Court has also held that workman and other workers were to join the duty as the management was refusing to allow the workers to come on duty. When Supreme Court had allowed the petitioner to join but as the applicant was in jail so he could not go to join the duty. When he was released on bail he gone to join the duty but the management never allowed him to join the duty.

12. In para No. 3 of the written statement it is admitted by the management that the applicant reported for duty as per direction of the Hon'ble Supreme Court alongwith others workers on 28th November, 1985. After 14th February, 1985 the applicant worked till 3rd December, 1985. It is admitted fact that as the applicant was in the lock up and in jail in murder trial case, how he will go to the factory to join the duty. It is throughout true that no one had informed the management that the applicant was in the jail in murder case and he could not come and join the duty. It is fact that the applicant belongs to class which is illiterate class of person and as the applicant was involved in murder case and members of the family were so much stress that they could not inform the management that applicant in jail in murder case.

13. Now the question is only whether the workman had abandoned the job and he was not allowed to join the duty. To prove that applicant was not allowed to join the duty he referred Ex. MW-2/1, letter Ex. WW-2 and 2/4 sent by the workman to the management by registered post and Ex. WW-4/A letter to Managing Director. However, reference was made on Ex. WW-3/D when Mehtab Singh had signed the papers. Shri S. K. Jain admitted that he was in service but he left the job and it is admitted that Mehtab Singh was in the employment of the management and he signed Ex. WW-3/D. The demand notice Ex. WWS was sent but was not accepted. The reference also made Ex. MW-2/1 when the applicant was not offered the job. The reference also made Ex. W/6, WW-1/4, Ex. WX, Ex. MW-1/1. Notice Ex. MW-1/3 wherein the notice to the workman is not admitted by S. K. Jain.

14. As Mr. Jain had admitted that the applicant had been working in the factory upto 3rd December, 1985. It is also proved that after that the accused was involving in murder case and could not appear. Now the question is whether the workman had abandoned the job or the management was not allowing to workman to work in the factory. Towards that the applicant had referred Ex. W/6 photocopy by Rajbir Singh made to the Labour Commissioner, Haryana regarding not taking on duty by the management. The management has also given two registered notices which are Ex. 3 and 5 but both the notices were refused to be accepted by the management. Ex. WW-4/2 is the direction issued by the Labour Court, Haryana to General Manager of the respondent, fixing the date of 15th July, 1987 at 12.30 P.M. on the day in 30 Bays

Building, Sector-17, Chandigarh for conciliation the matter between the workers and the management. Ex. WW-4/1 is the letter written by Rajbir Singh to Labour Commissioner, Haryana for filing the appeal before the Labour Commissioner and to send it to the Labour Court that he was ready and gone to the management to accept him to done his work but he was allowed to do the work and as such he was compelled by the said circumstances to file the demand notice.

15. Ex. MW-1/4 is conciliation proceedings recorded by Labour Officer and order passed on 15th July, 1987 shows that Sunder Singh was present and the management was summoned. Both the parties were summoned at Chandigarh on 10th August, 1987. On 10th August, 1987 both the parties appeared and complaint was filed as did not appear, the parties were ready to settle the dispute or not. This order was passed by the D. L. C. On 8th October, 1987 none for the management appeared and i.e. on the plea that the case was fixed to appear on 16th January, 1986 at 9.00 A.M. On 16th January, 1986 Rajbir Singh had appeared and Mehtab Singh had appeared on behalf of the management but later on none from the management had appeared and the complaint was filed.

16. However, the learned Authorised Representative for the workman had referred to 1994 LLR 404 in the dispute between Panipat Co-operative Sugar Mills, Ltd. And Labour Court & Anr. holding that workman contending his services were terminated-Management pleadings abondonement-Labour Court's award holding that services had been illegally terminated is held to be arbitrary as based no evidence.

17. It is proved from the evidence on record that the workman was ready to join the duty and for that purpose he had sent two letters by registered post after refusal of the management the matter to the Labour Inspector, Labour Officer, Joint Labour Commissioner and Labour Commissioner but the management did not show their willingness to allow the workman to come on the duty. For the said reasons I am of the view that the reference petition is tenable and I decide this issue in favour of the workman and against the management.

**Issue No. 2 :**

18 I have come to the conclusion on the finding of the issue No. 1 the workman had not abandoned the job and I decide this issue against the management.

**Issue No. 3 :**

19. This issue is not pressed or argued and hence this issue is decided against the management.

**Issue No. 4 :**

20. There is no evidence on record whether the workman has gainfully employed at all and hence I decided this issue against the management.

**Issue No. (Relief) :**

21. In view of my findings on the above issues I decide that reference petition is tenable and I allow it. I direct the management that workman is entitled to be in service of the management with continuity of service but with 75% (Seventy Five) of back wages with effect from 21st December, 1985. The reference is answered and returned accordingly. The parties are left to bear their own costs.

The 2nd February, 1995.

P. L. KHANDUJA,

Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.

Endorsement No. 832-92/230, dated the 9th February, 1995.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.